

IN THE HIGH COURT OF DELHI

CM(M) No.1906/2006

Ms.Smita Chaudhary Petitioner
! through: Mr.J.K.Seth, Senior Advocate
with Ms.Shalini Kapoor, Advocate.

VERSUS

\$ Smt.Uma Devi Respondent
^ through: Mr.B.T.Singh, Advocate.

% DATE OF DECISION: 23.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioner is aggrieved by the order dated 25.9.2006 allowing respondent's application in Order 9 Rule 13 CPC and as a consequence setting aside the ex-parte decree dated 18.3.2005.

2. Respondent contested the suit diligently till 31.5.2004. On said date counsel did not appear and defendant was proceeded ex-parte.

3. Suit continued and was finally decreed ex-parte on

18.5.2005. Application under Order 9 Rule 13 CPC was filed on 24.1.2006.

4. Explaining non-appearance and reason for delay it was stated in the application that the counsel concerned Mr. H.N.Bahuguna assured the defendant that he would call the defendant as and when needed. That the defendant lives in village Ghazipur. She is not a resident of Delhi. She felt reassured that her counsel would prosecute her defence diligently. That her son had been interacting with the counsel. That on 5.12.2006 her son Harish contacted Mr.H.N.Bahuguna who informed that the matter was listed for 6.1.2006. That on said date she and her son came to the Court but were shocked to find that the case was not listed. On inquiry from the Reader they learnt about the suit being decreed ex-parte. Thereafter another counsel was engaged and the application for setting aside the ex-parte decree/order was filed.

5. Opposing the application petitioner stated that the defendant was negligent. That blame was unnecessarily being put on the shoulders of the lawyer.

6. Learned Trial Judge has believed the respondent.

7. It is not uncommon for lawyers to let down their

clients. I need not note a large number of authorities noting that clients should not suffer due to defaults of their counsel.

8. What is relevant in the instant case to be noted is that the defendant lives in a village. She is not a resident of Delhi. Obviously, she had to rely upon her counsel.

9. Since I am dealing with a petition under Article 227 of the Constitution of India it would not be out of place for me to mention that learned Trial Judge has passed an order under Order 9 Rule 13 CPC which gives sufficient discretion to the learned Trial Judge while considering the sufficiency of the cause shown.

10. The order impugned has allowed the defendant to exercise her right to led defence evidence for the reason defendant was proceeded against ex-parte when stage of defence evidence reached.

11. Every attempt should be made to construe procedural laws to further the cause of substantive justice and unless compelling circumstances exist where procedure outways the substance only then the procedural law should be given primacy over substantive law.

12. The impugned order has achieved the aforesaid object of the law.

13. I thus dismiss the petition but with a direction that henceforth the defendant or her son would diligently appear on each date along with the counsel so that in future a situation of default does not occur. I am passing this direction for the reason the plaintiff relies upon written acknowledgment of the defendant acknowledging the liability and an argument was advanced by learned counsel for the petitioner that the defendant is shying away from leading defence evidence and that she knows that a decree has to follow. Non-appearance and suffering an ex-parte decree was a mere ploy to delay the proceedings.

14. No costs.

November 23, 2007
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PRADEEP NANDRAJOG, J.